



February 25, 1999

HOUSE BILL No. 1457

DIGEST OF HB 1457 (Updated February 23, 1999 11:06 am - DI 69)

Citations Affected: IC 31-35.

Synopsis: Termination of parent-child relationship. Provides that a petition to terminate the parent-child relationship must indicate whether certain factors apply that would require a party to file a motion to dismiss the termination petition. Removes the provision in the law that requires a party in a termination proceeding to file a motion to dismiss the petition to terminate the parent-child relationship if the child is being cared for by a custodian who is a parent, stepparent, grandparent, or by certain other responsible adults or relatives who are caring for the child as a guardian. Requires a person or entity who files a motion to dismiss a petition to terminate the parent-child relationship to send notice to certain persons.

Effective: July 1, 1999.

Avery, Klinker, Budak, Weinzapfel

January 19, 1999, read first time and referred to Committee on Judiciary.
February 24, 1999, amended, reported — Do Pass.

HB 1457—LS 7746/DI 76+



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February 25, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1457

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-35-2-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) A petition to
- 3 terminate the parent-child relationship involving a delinquent child or
- 4 a child in need of services may be signed and filed with the juvenile or
- 5 probate court by any of the following:
- 6 (1) The attorney for the county office of family and children.
- 7 (2) The prosecuting attorney.
- 8 (3) The child's court appointed special advocate.
- 9 (4) The child's guardian ad litem.
- 10 (b) The petition must:
- 11 (1) be entitled "In the Matter of the Termination of the
- 12 Parent-Child Relationship of _____, a child, and
- 13 _____, the child's parent (or parents)"; and
- 14 (2) allege that:
- 15 (A) one (1) of the following exists:

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(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

(3) Indicate whether at least one (1) of the factors listed in section 4.5(d)(1) through ~~4.5(d)(4)~~ **4.5(d)(3)** applies ~~that would require the court to dismiss the petition to terminate the parent-child relationship under this chapter~~ and specify each factor that would apply as the basis for ~~the dismissal of the petition~~. **filing a motion to dismiss the petition.**

SECTION 2. IC 31-35-2-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.5. (a) This section applies if:

(1) a court has made a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification with respect to a child in need of services are not required; or

(2) a child in need of services:

(A) has been placed in:

(i) a foster family home, child caring institution, or group home licensed under IC 12-17.4; or

(ii) the home of a person related to the child (as defined in IC 12-7-2-162.5);

as directed by a court in a child in need of services proceeding under IC 31-34; and

(B) has been removed from a parent and has been under the supervision of a county office of family and children for not



less than fifteen (15) months of the most recent twenty-two (22) months, excluding any period not exceeding sixty (60) days before the court has entered a finding and judgment under IC 31-34 that the child is a child in need of services.

(b) A person described in section 4(a) of this chapter shall:

(1) file a petition to terminate the parent-child relationship under section 4 of this chapter; and

(2) request that the petition be set for hearing.

(c) If a petition under subsection (b) is filed by the child's court appointed special advocate or guardian ad litem, the prosecuting attorney or the county office of family and children are entitled to be joined as a party to the petition upon application to the court.

(d) A party shall file a motion to dismiss the petition to terminate the parent-child relationship if any of the following circumstances apply:

(1) ~~That the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, or uncle or a relative who is caring for the child as guardian.~~

(2) That the current case plan prepared by or under the supervision of the county office of family and children under IC 31-34-15 has documented a compelling reason, based on facts and circumstances stated in the petition or motion, for concluding that filing, or proceeding to a final determination of, a petition to terminate the parent-child relationship is not in the best interests of the child. **A compelling reason may include the fact that the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, uncle, or a relative who is caring for the child as a guardian.**

~~(3)~~ (2) That:

(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the county office of family and children has not provided family services to the child, parent, or family of the child in accordance with a currently effective case plan prepared under IC 31-34-15 or a permanency plan or dispositional decree approved under IC 31-34, for the purpose of permitting and facilitating safe return of the child to the child's home; and

(C) the period for completion of the program of family services, as specified in the current case plan, permanency plan, or decree, has not expired.

~~(4)~~ (3) That:



(A) IC 31-34-21-5.6 is not applicable to the child;

(B) the county office of family and children has not provided family services to the child, parent, or family of the child, in accordance with applicable provisions of a currently effective case plan prepared under IC 31-34-15, or a permanency plan or dispositional decree approved under IC 31-34; and

(C) the services that the county office of family and children has not provided are substantial and material in relation to implementation of a plan to permit safe return of the child to the child's home.

The motion to dismiss shall specify which of the allegations described in subdivisions (1) through ~~(4)~~ (3) apply to the motion. If the court finds that any of the allegations described in subdivisions (1) through ~~(4)~~ (3) are true, as established by a preponderance of the evidence, the court shall dismiss the petition to terminate the parent-child relationship.

SECTION 3. IC 31-35-2-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6.5. (a) This section applies to hearings under this chapter relating to a child in need of services.

(b) At least five (5) days before a hearing on a petition or motion under this chapter:

- (1) the person or entity who filed the petition to terminate the parent-child relationship under section 4 of this chapter; or
- (2) the person or entity who filed a motion to dismiss the petition to terminate the parent-child relationship under section 4.5(d) of this chapter; ~~requesting that the court not terminate the parent-child relationship is filed under section 4.5(d) of this chapter; and a petition to terminate the parent-child relationship has not been filed;~~

shall send notice of the review to the persons listed in subsection (c).

(c) The following persons shall receive notice of a hearing on a petition or motion filed under this chapter:

- (1) The child's parent, guardian, or custodian.
- (2) The child's foster parent.
- (3) A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:
 - (A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the county office of family and children;
 - (B) the court having jurisdiction in the adoption case has



- 1 determined under an applicable provision of IC 31-19-9 that
2 consent to adoption is not required from a parent, guardian, or
3 custodian; or
4 (C) a petition to terminate the parent-child relationship
5 between the child and any parent who has not executed a
6 written consent to adoption under IC 31-19-9-2, has been filed
7 under IC 31-35 and is pending.
8 (4) Any other person who:
9 (A) the county office of family and children has knowledge is
10 currently providing care for the child; and
11 (B) is not required to be licensed under IC 12-17.2 or
12 IC 12-17.4 to provide care for the child.
13 (5) Any other suitable relative or person who the county office of
14 family and children knows has had a significant or caretaking
15 relationship to the child.
16 (6) Any other party to the child in need of services proceeding.
17 (d) The court shall provide to a person described in subsection (c)
18 an opportunity to be heard and make recommendations to the court at
19 the hearing.
20 (e) A person described in subsection (c)(2) through (c)(5) does not
21 become a party to a proceeding under this chapter as the result of the
22 person's right to notice and the opportunity to be heard under this
23 section.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1457, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 26, after "child." insert **"A compelling reason may include the fact that the child is being cared for by a custodian who is a parent, stepparent, grandparent, or responsible adult who is the child's sibling, aunt, uncle, or a relative who is caring for the child as a guardian."**

Page 4, line 10, strike "as established by".

Page 4, line 10, delete "clear and".

Page 4, line 11, delete "convincing".

Page 4, line 11, strike "evidence,".

and when so amended that said bill do pass.

(Reference is to HB 1457 as introduced.)

VILLALPANDO, Chair

Committee Vote: yeas 12, nays 0.

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